IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 29307 of 2007

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABA KANAJI VAGHELA - Petitioner(s)
Versus
DISTRICT DEVELOPMENT OFFICER & 1 - Respondent(s)

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Appearance :
MR JV JAPEE for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,
MR PRATIK ACHARYA, AGP for Respondent(s) : 2

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 06/12/2007

ORAL JUDGMENT

1. Rule. Mr.H.S.Munshaw, learned counsel, waives service of Rule on behalf of the respondent No.1. Mr.Pathik Acharya, learned Assistant Government Pleader, waives service of Rule on

behalf of the respondent No.2. In the facts and circumstances of the case and with the consent of the learned counsel for the parties, the matter is being heard finally today.

2. By filing the present writ petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of Mandamus or any other appropriate writ or order to quash and set aside the order dated 17.5.2007, passed by the respondent No.1, placing the petitioner under suspension under the provisions of Section 59(1) of the Gujarat Panchayats Act 1993 (“the Act” for short) and, further, to quash and set aside the order dated 27.9.2007, passed by the respondent No.2, whereby the appeal of the petitioner, challenging the order dated 17.5.2007, has been dismissed.

3. The admitted facts of the case, which emerge from a perusal of the averments made in the petition as well as the documents annexed thereto are, that the petitioner was elected as Sarpanch of Jalund Gram Panchayat and she remained as such from the year 2001-06.

Thereafter, the petitioner once again contested the elections to the said Gram Panchayat and was elected as Sarpanch in the year 2007. Certain members of the Jalund Gram Panchayat made a written complaint dated 26.12.2006, alleging that an amount of Rs.1,00,000/- (Rupees one lakh) which had been granted by the Oil and Natural Gas Corporation Ltd. vide cheque dated 11.10.2005, to the said Gram Panchayat, for carrying out certain developmental works such as construction of Verandah for the primary school, laying of a pipeline for drinking water and construction of a Dhobi Ghat, was misappropriated by the petitioner, in connivance with the Talati-cum-Mantri and member of the Gram Panchayat Mr.Chanduji Lakhaji Thakore, and that the matter should be investigated by the Taluka Development Officer. Pursuant to the report given by the Taluka Development Officer, a complaint was filed against the petitioner and other co-accused vide C.R.No.I-28/2007 with Pethapur Police Station for offences punishable under Sections 408, 409 and 114 of the Indian

Penal Code on 14.3.2007. The petitioner was arrested on 16.4.2007 in connection with the said offences and remained in jail upto 14.6.2007, on which date, she was released on bail. In the meanwhile, the respondent No.1, after preliminary inquiry by the Taluka Development Officer, being satisfied that the petitioner was involved in the commission of the alleged offences which amounted to moral turpitude, passed an order on 17.5.2007, under Section 59(1) of the Gujarat Panchayats Act, 1993, ("the Act" for short) suspending the petitioner as Sarpanch of the Gram Panchayat with immediate effect. A copy of the order dated 17.5.2007 is annexed as Annexure-C to the petition. The petitioner filed an appeal against the order of the respondent No.1 on 18.6.2007, on various grounds. The memorandum of appeal is annexed as Annexure-D to the petition. The respondent No.2, after hearing the learned advocate representing the petitioner, and after taking into consideration the grounds raised in the memorandum of appeal, confirmed the order of

the respondent No.1, by passing order dated 27.9.2007, which is annexed at Annexure-E to the petition. Being aggrieved by the aforesaid orders dated 17.5.2007 and 27.9.2007, the petitioner has approached this Court, praying for the relief as mentioned hereinabove.

4. I have heard Mr.J.V.Japee, learned counsel for the petitioner, Mr.H.S.Munshaw, learned counsel for the respondent No.1 and Mr.Pathik Acharya, learned Assistant Government Pleader for the respondent No.2, at length and in great detail, and have considered the submissions made at the Bar as well as the judgments cited in support of the various contentions raised by the parties.

5. Mr.J.V.Japee, learned counsel for the petitioner, has made the following submissions:

(i) That before passing the order of suspension under Section 59(1) of the Act, no notice was given to the petitioner, and no opportunity of personal hearing was given. Merely because the petitioner was in jail, she could not have been deprived of an opportunity of hearing and notice to this effect could have been sent to her

residence and her presence could have been procured by the respondent No.1, before passing the order dated 17.5.2007, which was served upon her in jail. It is submitted that as per the guidelines of the State Government, dated 5.6.1996, which say that as far as possible, an opportunity of hearing should be provided to the person against whom an order of suspension is to be passed, the petitioner should have been heard before passing the order of suspension. According to the learned counsel for the petitioner, if notice had been issued to the petitioner, she could have made arrangements to be released on bail and by not affording her an opportunity of being heard, the respondent No.1 has deprived her of the opportunity to submit material in her defence before the respondent No.1. Mr.Japee has contended that the order dated 17.5.2007 cannot be upheld since it is violative of the principles of natural justice. According to the learned counsel for the petitioner, the order of suspension under Section 59(1) of the Act entails civil

consequences to the petitioner, who is an elected representative and, suspension in such cases cannot be equated with suspension in the case of a Government employee, as the voters of the petitioner will lose faith in her, since the order of suspension has been passed on the ground of moral turpitude. In support of the above contentions, Mr.Japee has brought to the notice of this Court, judgment of this Court (Coram: M.R.Shah, J.) dated 21.7.2004 rendered in the case of **Dalsangji Godadbhai Chaudhary v. District Development Officer - Special Civil Application No.5602 of 2004** and **Ajit Jayantibhai Patel v. Arvindbhai Devjibhai Rohit** reported in **2005(1) GCD 672 (Guj.)** It is submitted by the learned counsel for the petitioner, that in both the aforesaid decisions, this Court has taken the view that before passing an order of suspension under Section 59(1) of the Act, the principles of natural justice should be followed and an opportunity of hearing should be afforded and, therefore, in this view of the matter, the order of the respondent No.1 dated 17.5.2007

should be quashed and set aside and the petition may be allowed.

(ii) The second contention raised by Mr.Japee is that the appellate authority, i.e. the respondent No.2, could have remanded the matter to the respondent No.1 on the ground that an opportunity of hearing has not been provided to the petitioner, as was done in another case by the said authority, based on the guidelines dated 5.6.1996, which order is annexed at Annexure-F to the petition. It is further submitted that the appellate authority has adopted different standards in different cases and the petitioner has not been given similar treatment as has been given to other similarly situated persons. It is further submitted by the learned counsel for the petitioner, that by not giving the petitioner an opportunity of hearing before the respondent No.1, she has been deprived of an opportunity of filing an appeal against the decision which may have been rendered by the respondent No.1 after hearing her. In order to fortify his submissions,

regarding violation of the principles of natural justice, the learned counsel has relied upon the decision in the case of **Olga Tellis and others v. Bombay Municipal Corporation and others - AIR 1986 SC 180.**

(iii) Lastly, it is submitted by the learned counsel for the petitioner, that the petitioner has not committed any act involving moral turpitude but she is a victim of circumstances, and the order suspending her from the post of Sarpanch is wrong and illegal and deserves to be quashed and set aside.

6. Per contra, Mr.H.S.Munshaw, learned counsel for the respondent No.1, submits that there is no illegality or infirmity in the impugned orders of the respondents No.1 and 2. He has contended that the petitioner is a public servant within the meaning of Section 272 of the Act, and since an FIR has been lodged against her, for alleged offences under Sections 408, 409 of the Indian Penal Code, it is prima-facie evident that she has committed an act involving moral turpitude, and, therefore, the action of the respondent

No.1 in suspending her under the provisions of Section 59(1) of the Act is perfectly legal and valid. Mr.Munshaw has further submitted that the petitioner has remained in jail from 16.4.2007 to 14.6.2007 and the respondent No.1 has passed the order of suspension on 17.5.2007, i.e. after about a month of the imprisonment of the petitioner, and this order has been passed in the public interest and in the interest of the administration of the Panchayat. It is further emphasized by Mr.H.S.Munshaw, that after the petitioner was granted bail, she has filed her detailed grounds of appeal and the appellate authority, i.e. the respondent No.2 has heard the learned advocate for the petitioner and considered the grounds of appeal, and only thereafter, the order dated 27.9.2007 has been passed. According to the learned counsel for the respondent No.1, the petitioner has raised all possible grounds in her defence before the appellate authority and cannot contend at this stage that she has been deprived of an opportunity of hearing or of filing an appeal.

It is submitted by Mr.Munshaw that since the petitioner was in jail with effect from 16.4.007 to 14.6.2007, it was not possible to provide her with an opportunity of hearing before passing the order of suspension, which was necessitated in the interest of the administration of the Panchayat. However, the bona fide intention of the respondent No.1 is evident from the fact that the order dated 17.5.2007 was served upon the petitioner in jail and the petitioner, on being granted bail, immediately filed an appeal before the appellate authority. Mr.H.S.Munshaw further emphasized that an order of suspension passed under Section 59(1) is different from an order of removal under Section 57 of the Act. Suspension is only an interim measure and, if at the conclusion of the trial, the petitioner is acquitted, she can always be reinstated on the post of Sarpanch of the concerned Gram Panchayat. In support of this contention, the learned counsel has placed reliance upon the Division Bench judgment of this Court in **Abhuji Karshaji Thakore v. Thakore Jitaben Manchaji &**

Ors. - 2003(2) GLR 1541. Mr.Munshaw has taken this Court through the provisions of Sections 55, 57 and 59(1) of the Act which shall be referred to hereinafter. The crux of the submissions made by the learned counsel for the respondent No.1 is that there is no illegality or infirmity in the order passed by the respondent No.1, as upheld in appeal by the respondent No.2 and the same deserves to be upheld by this Court, and the petition dismissed.

7. Mr.Pathik Acharya, learned Assistant Government Pleader appearing for the respondent No.2 has contended that the petitioner was served with the order of suspension passed under Section 59(1) of the Act by the respondent No.1 while she was in jail, thereby giving her an opportunity to file an appeal against the same. He has submitted that the petitioner has filed an appeal taking all grounds available to her, which has been considered by the respondent No.2, after hearing the parties. Mr.Acharya has relied upon the Constitution Bench judgment of

the Supreme Court in **R.P.Kapur v. Union of India and another - AIR 1964 SC 787**, wherein the Supreme Court has clarified the kinds of suspension and has elucidated that suspension of a public servant as an interim measure is different from suspension as a penalty. Mr.Acharya has submitted that, in the present case, the suspension of the petitioner under Section 59(1) of the Act is only a temporary suspension and it cannot be said that the competent authority has gone beyond the purview of the requirements of Section 59(1) of the Act. The second judgment relied upon by the learned Assistant Government pleader is in the case of **Govindbhai Mahipatbhai Desai since deceased through his heirs v. State of Gujarat & Anr. - 2007(1) GLR 650**. Mr.Acharya, placing reliance upon this judgment, has submitted that even though an opportunity of hearing may not have been given to the petitioner before passing an order of suspension, this Court has held in **Govindbhai Mahipatbhai Desai since deceased through his heirs v. State of Gujarat & Anr.**

(supra) that the principles of natural justice cannot be pressed into service if, the petitioner is not able to satisfactorily demonstrate that prejudice has been occasioned to her. The third judgment relied upon by the learned Assistant Government Pleader is in the case of **Mafatbhai Popatbhai Patel v. District Development Officer - [2004]6 GHJ (699)**. While placing reliance upon this judgment, Mr.Acharya has submitted that the facts in that case are similar to the facts which obtain in the present writ petition and in that judgment the Court has explained the difference between Sections 59(1) and 57 of the Act and has observed that the proceedings under these two sections are independent proceedings, having different objects and all that is required for the competent authority to pass an order of suspension under Section 59 of the Act is whether a criminal case is instituted against the Sarpanch for an offence involving moral turpitude and whether the Sarpanch is in judicial custody or not. According to him, both

these requirements have been fulfilled in the present case and the orders of the respondent No.1, as confirmed by the respondent No.2, suffer from no legal infirmity and deserve to be upheld.

8. Having heard the learned counsel for the respective parties at great length and detail, it will be in order to notice the admitted and undisputed facts of the case. It is not in dispute that the petitioner was elected as Sarpanch of Jalund Gram Panchayat from the year 2001 to 2006. Thereafter, the petitioner was again elected as Sarpanch of the said Gram Panchayat in the year 2007. A complaint dated 26.12.2006, for alleged misappropriation of rupees one lakh, was sent to the competent authority by some members of the Panchayat. An FIR was filed against the petitioner and other co-accused persons under Sections 408, 409 and 114 of the Indian Penal Code, on 14.3.2007. Thereafter, the petitioner was arrested on 16.4.2007 and remained in custody upto 14.6.2007. The respondent No.1 passed the order

of suspension on 17.5.2007. Thereafter, the petitioner filed an appeal dated 18.6.2007, which was dismissed after hearing the learned counsel for the petitioner on 27.9.2007.

9. It is also not in dispute, that the petitioner is a public servant within the meaning of Section 272 of the Act. Section 55 of the Act enumerates the executive functions and duties of the Sarpanch and Upa-Sarpanch. Section 57 of the Act deals with removal from office of any member of the Panchayat, the Sarpanch, or, as the case may be, the Upa-Sarpanch, after giving him notice, and an opportunity of being heard, and after such inquiry as may be deemed necessary, as provided for in that Section. However, the relevant provision of law, as far as the present petition is concerned, is Section 59(1) of the Act, which provides for the suspension of the Sarpanch or Upa-Sarpanch. The same is reproduced hereinbelow:

> *59. Suspension of Sarpanch or Upa-Sarpanch-*
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> *(1) The District Development Officer may suspend from office the Sarpanch or the Upa-Sarpanch of a village panchayat against whom any criminal proceeding in respect of*

> *an offence involving moral turpitude have been instituted or who has been detained in a prison during trial for any offence or who is undergoing such sentence of imprisonment as would not disqualify him from continuing as a member of the panchayat under section 30 or who has been detained under any law relating to preventive detention for the time being in force."*

A perusal of the provisions of Section 59(1) of the Act make it clear that the District Development Officer is empowered to suspend the Sarpanch or Upa-Sarpanch of the village Panchayat, against whom criminal proceedings in respect of the offence involving moral turpitude have been instituted or who has been detained in prison during trial for any offence. The scope of Section 59 has been discussed in **Mafatbhai Popatbhai Patel v. District Development Officer** (supra), wherein it has been observed in paragraph-10 that:

> *"Be that as it may, so far as the proceedings under Section 59(1) of the Gujarat Panchayat Act are concerned, as stated hereinabove, there are different standards than the standards and the evidence which is required to be considered*

while taking a decision for removal of a Secretary and having found that the petitioner is involved in a criminal case for the offence involving moral turpitude (with regard to misappropriation) of the offence under Section 408 read with Section 114 IPC and that there is a chargesheet filed against the petitioner and that the petitioner was in judicial custody for more than 4 days, it cannot be said that the judgment and order passed by both the authorities below suspending the petitioner under Section 59(1) of the Act are in any way illegal and/or arbitrary and/or contrary to the provisions of Section 59 of the Gujarat Panchayat Act which calls for interference of this Court exercising powers under Article 226 of the Constitution of India. This Court is of the opinion that both the authorities are justified in passing an order of suspension, suspending the petitioner as sarpanch of Piploi Gram Panchayat, the said orders are just and proper and in accordance with law and in consonance with the provisions of Section 59(1) of the Gujarat Panchayats Act and in public interest. Under the circumstances, there is no substance in the present Special Civil application and the same is hereby dismissed."

10. On the admitted and undisputed facts, the learned counsel for the petitioner has been heard at length on all aspects of the matter, as well as on the merits of the case. However, the main ground of challenge raised by the learned counsel for the petitioner is that no opportunity of hearing has been afforded to the petitioner by the respondent No.1 before passing the order of suspension, therefore, the impugned orders deserve to be set aside on this ground.

11. It is not in dispute that the principles of natural justice should, as far as possible, be adhered to by the concerned authority, as has been held by this Court in **Dalsangji Godadbhai Chaudhary v. District Development Officer – (supra)** and **Ajit Jayantibhai Patel v. Arvindbhai Devjibhai Rohit** (supra), relied upon by the learned counsel for the petitioner. It is no doubt true that before passing the order of suspension dated 17.5.2007, the respondent No.1 has not heard the petitioner who was in jail at

the relevant point of time. The question to be decided is, whether the order of the respondent No.1, suspending the petitioner, and of the respondent No.2, confirming the said order in appeal, ought to be set aside and the matter remanded to the appellate authority or the District Development Officer, at this stage. In my considered view, this would be an exercise in futility. In **Hamidbhai Usufbhai Patel v. Director of Municipalities and Others - 1990(1) GLH 97**, this Court was faced with a similar situation. In that case, a contention was raised that the impugned order had been passed without affording an opportunity of hearing to the petitioner, and on that ground it was urged that the order be set aside. After noticing the undisputed and admitted facts, this Court dismissed the writ petition, and held as under, in paragraphs 11 and 12 of the judgment:

> *"11. In view of this position, the quashing and setting aside the orders passed by the Collector and the Director of Municipalities and remanding the matter to the Collector and/or to the Director of*

Municipalities for affording an opportunity of being heard to the petitioners and thereafter arriving at the decision in accordance with law would be an exercise in futility. It is settled principle of law that Courts do not issue futile writs. In the case of S.L. Kapoor v. Jagmohan, reported in AIR 1981 SC 136, the Supreme Court has observed as follows :-

> *"Where on the admitted and indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs."*

The aforesaid principle is laid down by the supreme Court way back in the year 1980 (the decision in the case of S.L. Kapoor (supra) has been rendered on Sept. 18, 1980). Thereafter in the case of Olga Tellis (AIR 1986 SC 180) (supra) on which heavy reliance is placed by the learned counsel for the petitioner, the Supreme Court has reiterated the aforesaid principles laid down by it in the case of S.L. Kapoor (supra) and has in fact followed the same (see para 51 of the judgment). In the case of Olga Tellis (supra) the Supreme Court has held that before taking any action against the

pavement dwellers and hawkers, the Commissioner was required to afford an opportunity to the petitioner to show cause why the encroachment committed by them on pavements and footpaths should not be removed. But it was further held that the opportunity which was denied by the Commissioner was granted by the Supreme Court in an ample measure and the Supreme Court, after considering the contentions of both the sides, was satisfied that the opinion of the Commissioner was justified in directing the removal of encroachment committed by the petitioners on pavements; footpaths or accessory roads. Thereafter the Supreme Court referred to the observations made by it in the case of S.L. Kapoor (supra). Thus it is abundantly clear that the principle laid down in the case of S.L. Kapoor (supra) is reiterated and re-affirmed by the five Judge Bench of the Supreme Court in the case of Olga Tellis (supra).

12. Following the aforesaid principle, the question arises: In the facts and circumstances of the case, is it necessary to issue writ to the respondents Nos. 1 and 2 (Director of Municipalities and Collector) as prayed for? If yes, is it not an exercise in futility? The answer is that it would be an exercise in futility. Even

the learned counsel for the petitioner has not been able to show anything whatsoever which may help to reach a conclusion that on the basis of admitted and indisputable facts, respondents Nos. 3 and 4 could ever have been disqualified to continue as councillors. Therefore it would be improper and unwise to exercise powers under Art.226 of the Constitution inasmuch as it would be an exercise in futility.“

While relying upon the above-quoted observations of this Court, I am of the view that no fruitful purpose would be served if the impugned orders are set aside and the matter remanded to the original authority, since, the competent authority under the Act has passed the order on the basis of undisputed and admitted facts. To remand the matter to the original authority which passed the order of suspension, which has been confirmed by the appellate authority, would be an exercise in futility, in the facts and circumstances of the case.

12. The law regarding violation of the principles of natural justice has developed in recent years. It may be worthwhile to notice a few

judgments of the Apex Court in this regard.

The Supreme Court, in **Divisional Manager, Plantation Division, Andaman & Nicobar Islands v. Munnu Barrick and Others - (2005)2 SCC 237**, has held as under:

> *"The principles of natural justice cannot be put in a straitjacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regards compliance with the principles of natural justice, the court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-obtaining a copy of the enquiry report. A court will refrain from interfering with an order, having regard to "useless formality theory", in a given case."*

In **Vice-Chairman, Kendriya Vidyalaya Sangathan and another v. Girdharilal Yadav – (2004)6 SCC 325**, same principle has been reiterated as under:

> *"...It is also a well settled a well-settled principle of law that the principles of natural justice should not be stretched too far and the same cannot be put in a straitjacket formula. In Bar Council of*

India v. High Court of Kerala [(2004)6 SCC 311] this Court has noticed that: (SCC p.324, paras 49-50)

> *"24. The principles of natural justice, it is well settled, cannot be put into straitjacket formula. Its application will depend upon the facts and circumstances of each case. It is also well settled that if a party after having proper notice chose not to appear, he at later stage cannot be permitted to say that he had not been given a fair opportunity of hearing. The question had been considered by a Bench of this Court in Sohan Lal Gupta v. Asha Devi Gupta [(2003)7 SCC 492] of which two of us (V.N.Khare, C.J. and Sinha, J.) are parties wherein upon noticing a large number of decisions it was held: (SCC p.506, para 29)*
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> > *"29. The principles of natural justice, it is trite, cannot be put in a straitjacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby."*
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> *25. The principles of natural justice, it is well settled, must not be stretched too far.*
> *(See also Mardia Chemicals Ltd. v. Union of India [(2004)4 SCC 311 : (2004)4 Scale 338] and Canara Bank v. Debasis Das) [(2003)4 SCC 557 : 2003 SCC (L&S) 507]*

In Union of India v. Tulsiram Patel whereupon reliance has been placed by Mr.Reddy, this Court held: (SCC p.477, para

97)

> *97. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed". (emphasis supplied)*

In **Aligarh Muslim University and others v. Mansoor Ali Khan - AIR 2000 SC 2783**, the Supreme Court has categorically held that there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India, especially if the quashing of the order which is in breach of natural justice is likely to result in another order which is itself illegal.

13. In the present case, quashing and setting aside

the impugned orders would amount to reviving an illegality since, on the admitted facts, the petitioner has been imprisoned for offences involving an act of moral turpitude, which is the only requirement for passing an order of suspension under Section 59(1) of the Act. On the admitted facts and in view of the provisions of Section 59(1) of the Act, there is no illegality in the impugned order of suspension passed by the respondent No.1. In view of the above position, and considering the judgments, of this Court in **Hamidbhai Usufbhai Patel v. Director of Municipalities and Others** (supra) and of the Apex Court referred to hereinabove, in my opinion, it is not necessary to quash and set aside the orders dated 17.5.2007 and 27.9.2007, impugned in this petition and remand the matter on the ground of violation of principles of natural justice. The petitioner has raised several grounds in the memorandum of appeal filed before the respondent No.2 and has been represented by an advocate before the appellate authority. The order dated 27.9.2007

has been passed after hearing the parties and considering the grounds raised by the petitioner. The order dated 17.5.2007 is well within the parameters prescribed by Section 59(1) and cannot be said to be suffering from any infirmity or illegality on that account. Similarly, the order of the respondent No.2 dated 27.9.2007 has been passed after hearing the parties and considering the admitted facts and the material on record. Both the impugned orders do not warrant interference by this Court.

14. It must be kept in mind that while exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India, this Court cannot go into the factual aspects of the matter, which may prejudice the parties at the time of trial. The limited scope of the exercise of jurisdiction by this Court is to examine the legality of the impugned orders. As already stated, the impugned orders to not suffer from any legal infirmity.

15. In the above view of the matter, and in the

light of the judgments of this Court and of the Apex Court referred to hereinabove, the petition fails, and is dismissed. Rule is discharged. There shall be no orders as to costs.

(Smt.Abhilasha Kumari, J.)

(sunil)